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No. 91-1353

In The

Supreme Court of the United States

October Term, 1991

THOMAS F. CONROY,

Petitioner,

vs.

WALTER S. ANISKOFF, JR., THE INHABITANTS OF THE
TOWN OF DANFORTH, MAINE, AND H.C. HAYNES, INC.,*Respondents.**On Petition for Writ of Certiorari to the Supreme Judicial Court
of Maine***RESPONDENTS' BRIEF IN OPPOSITION****TORREY SYLVESTER**

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QUESTION PRESENTED FOR REVIEW

Whether § 525 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. Appendix § 525, protects a member of the United States Armed Forces, during military service, from seizure and sale of his real property by a municipal taxing authority for unpaid taxes on that real property levied during the period of military service without a showing of prejudice resulting from that military service.

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*On Petition for a Writ of Certiorari to the Supreme Judicial Court
of Maine*

RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The petitioner is a full colonel and a career military officer who has been on continuous active duty with the United States Army from November 1966 through the date of trial. In 1973, petitioner purchased two lots of real property in the Town of

Danforth, Maine. Following his acquisition of the real property, petitioner paid taxes to the Town of Danforth, notwithstanding the fact that he moved from duty station to duty station throughout the United States, Europe, and the Far East. The petitioner was stationed in Korea in 1977 but still received his tax bill and paid it. The last tax bill the petitioner received and paid was for 1983 real estate taxes in Danforth, Maine. Petitioner did not pay his real estate taxes for the Danforth, Maine parcels for the years 1984, 1985, and 1986. In 1987, petitioner received a notice from the Clerk of the Town of Danforth, Maine, that the property was sold for unpaid taxes. The lots owned by petitioner were unimproved parcels with no buildings on them. The land was not used for professional or agricultural purposes.

In addition to the property which is the subject of this litigation, petitioner owns property in South Portland, Maine, and has paid taxes on it since 1964.

As a result of petitioner's failure to pay his real estate taxes, the Town of Danforth acquired the land and sold it pursuant to the law of the State of Maine. The parties have stipulated that the Town of Danforth "followed normal procedures, filed tax liens, and had it not been for Colonel Conroy's status, the procedures would have been entirely proper." Subsequent to the Town's foreclosure, respondents, H.C. Haynes, Inc. and Walter Aniskoff, Jr., independently acquired the parcels from the Town of Danforth. H. C. Haynes, Inc., specifically acquired its parcel with the understanding that the Town had acquired it because the former owner had failed to pay real estate taxes. Respondents Haynes and Aniskoff did not know that the prior owner of the property was a member of the military. Respondents, H. C. Haynes, Inc. and Walter Aniskoff, Jr. were good faith purchasers for value.

Following trial, the Maine Superior Court determined that

50 U.S.C. App. § 525 (Soldiers' and Sailors' Civil Relief Act) did not protect petitioner, a career serviceman, from the seizure and sale of the Danforth, Maine parcels unless he could demonstrate that his active military service resulted in a hardship which excused his failure to timely pay his taxes. Petitioner did not allege nor did he demonstrate any evidence from which the court could infer that his active duty in the military created a hardship. The Maine Supreme Judicial Court affirmed the Superior Court by an equally divided court. Petitioner's Petition for Writ of Certiorari to this Court followed.

REASONS FOR DENYING THE WRIT

I.

The Maine Supreme Judicial Court's decision affirming the trial court's determination that the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 525, does not toll the statutes of limitations for the redemption of real estate for a career serviceman, absent a showing of hardship resulting from the military service is consistent with the decisions of other state courts, the federal courts of appeal and a prior United States Supreme Court decision.

The Soldiers' and Sailors' Civil Relief Act was promulgated as a result of pressure associated with the first World War in 1918 and was constitutionally justified in order to protect soldiers from suit during war. *See Pierrard v. Hoch*, 191 P.2d 328 (Or. 1920). Section 510 states the purpose of the Act, in part, as follows:

In order to provide for, strengthen, and expedite the national defense *under the emergent conditions* which are threatening the peace and security of the United States . . . provision is made to suspend enforcement of civil liabilities in certain cases . . .

and to this end the following provisions are made
for the temporary suspension of legal proceedings
 and transactions which may prejudice the civil
 rights of persons in such service.

(Emphasis added).

By his Petition, petitioner requests this Court to address the question of the application of 50 U.S.C. App. § 525 to a career officer who has failed to pay real property taxes and who has demonstrated no showing of hardship from his military service. For the reasons set forth below, it is unnecessary for this Court to accept petitioner's question since the decision of the Maine Supreme Judicial Court is consistent with existing case law on the precise question presented.

Several courts have had the opportunity to determine whether 50 U.S.C. App. § 525 is an absolute bar to the running of any statutes of limitations period or whether in the case of a career military serviceman the limitation periods may be tolled only upon a showing that the military service resulted in a hardship excusing timely legal action. The Maine Supreme Judicial Court's decision is consistent with other federal and state court decisions requiring a showing of prejudice by the service member that his active military service inhibited his ability to be current on his real estate taxes.

Nearly all the cases relied on by the petitioner which support the proposition that § 525 is absolute and that no showing of prejudice is required are distinguishable from the case before this Court. While there is a line of cases which support the proposition that the mere status of being on active duty is all that is necessary to toll the statute of limitations, those cases involve protection of the serviceman from the application of limitation period which would have barred the serviceman from asserting otherwise

untimely non-real estate causes of action. The cases cited by petitioner offer no support to his Petition before this Court since they are factually dissimilar to the case at bar with the exception of *Le Maistre v. Leffers*, 333 U.S. 1 (1948) which is otherwise distinguishable. None of the cases cited by petitioner discuss the statute of limitations issue relative to the serviceman's failure to pay real estate taxes (Petitioner's Brief at 15-16). In *Mouradian v. The John Hancock Cos.*, 930 F.2d 972 (1st Cir. 1991), a serviceman sued his former employer for wrongful termination. In *dictum*, the First Circuit merely cited a law review article which opined that the "prevailing interpretation" of the Soldiers' and Sailors' Civil Relief Act required the tolling of limitations period during any period of military service. The decision did not discuss that proposition relative to real estate redemption actions. In *Mason v. Texaco, Inc.*, 862 F.2d 242 (10th Cir. 1988), the Tenth Circuit tolled that statute of limitations during military service and allowed a products liability, personal injury, and wrongful death action to be brought by a serviceman following his discharge from the service. In *Ricard v. Birch*, 529 F.2d 214 (4th Cir. 1975), the Court tolled the statute of limitations and permitted a wrongful death action brought by survivors against military persons following his discharge. The other cases cited by petitioner are dissimilar and have no relevance to the question here: *i.e.*, *Ray v. Porter*, 464 F.2d 452 (6th Cir. 1972) (personal injury action resulting from a motor vehicle accident brought by military service person); *Wolf v. C.I.R.*, 264 F.2d 82 (3rd Cir. 1959) (stay of tax court proceeding is mandatory during term of military service); *Bickford v. United States*, 56 F.2d 636 (Ct. Cl. 1981) (military back pay and allowances). Since none of the cases cited by petitioner addressed the issue of tolling the statute of limitations for a career serviceman who failed to pay his real estate taxes, the cases cited by petitioner are not persuasive here.

Those courts which have directly considered the issue of whether the statute of limitations is tolled with respect to a

redemption of real estate as a result of failure to pay taxes are fact specific. The only United States Supreme Court case which addressed the issue of real estate redemption is *Le Maistre v. Leffers*, 333 U.S. 1 (1948) and this Court did not address the issue of a career serviceman. In *Le Maistre* this Court opined that a military serviceman had the benefit of the tolling of the statute of limitations as long as he was in active military service during a time of war. This Court specifically noted that "as we indicated on another occasion, the Act must be read with an eye friendly to those who have dropped their affairs to answer their country's call." *Le Maistre* at 6. It is clear that this Court sought to protect the interests of the serviceman during the brief period he served during a time of war. That is not the case here since petitioner is a career military officer who was not prejudiced by his military service. As the trial court in this case noted, the *Le Maistre* Court dealt with the rights of a non-career serviceman. The facts of *Le Maistre* do not support the petitioner's position and have limited application here because the facts are distinguishable from that of the petitioner since he was not actively engaged in a war.

Those cases which have dealt with real estate taking outside the facts of *Le Maistre* (short term soldier and war time) have attempted to balance the significant interests of the military and civilian populations with reference to stability in the conveyance of real estate. This issue is addressed in the following cases and properly resolved: *King v. Zagorski*, 207 So.2d 61 (Fla. 1968) (denying a soldier redemption of property purchased sixteen (16) years earlier with no claim of ignorance, state laws, or consequences of non-payment of taxes); *Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971) (denying retired soldier protection for failure to pay tax on property purchased while a career soldier when he knew it was subject to tax and sale for non-payment); see also, *Pannell v. Continental Can Co., Inc.*, 554 F.2d 216 (5th Cir. 1977) (career soldier of 31 years not benefiting from the Soldiers' and

Sailors' Civil Relief Act with no evidence of hardship associated with military service). These cases have all been resolved in favor of the integrity of the real estate system and denying a special status to the military landowner simply because he is in the military. The position advanced by petitioner would lead to an "absurd and illogical" result if applied here. See *Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971); *King v. Zagorski*, 207 So.2d 61 (Fla. Dist. Ct. App. 1968). If § 525 acted as an absolute bar, the title to any real estate owned by a serviceman would remain unsolved for good faith purchasers who have no prior notice that the property had been taken for taxes as a result of the serviceman's non-payment. The courts have recognized this absurdity.

Mr. Bailey's contention, distilled to its essence, is that regardless of all other factual and legal considerations, by virtue of the above quoted statute, he must automatically prevail. If his position would be meritorious, it would mean that a career service person could buy real estate, ignore and disregard his tax responsibilities for perhaps 30 years and then at his leisure during the redemption period following discharge, reclaim the property. *Bailey v. Barranca*, 488 P.2d 725, 728 (N.M. 1971). To permit a tax delinquent to finally redeem under such circumstances would amount to giving a license to a career service man to acquire real property and then with impunity refuse to pay taxes there on for so long as he should elect to remain in the service, plus six (6) months thereafter; while casually weighing whether his investment was worthwhile . . . Such interpretation would give a career man unwarranted weapon not intended by the Act.

King v. Zagorski, 207 So.2d 61 (Fl. Dist. Ct. App. 1968).

The regularity of real estate practice, the reliance of municipalities, particularly small municipalities, such as Danforth, Maine, on payment of real estate taxes, and the rights of owners in line of title to rely on what the chain of title suggests require that this Court deny consideration of petitioner's writ.

The decision of the Maine Supreme Court which did not permit petitioner, a career serviceman, to utilize 50 U.S.C. App. § 525 absent a showing of hardship related to his military service was consistent with other state and federal courts, and not inconsistent with this Court's decision in *Le Maistre*.

CONCLUSION

For the reasons set forth in this brief in opposition, the Petition for a Writ of Certiorari should be denied.

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